Though the distinction is not made in the books, there would seem to be a vital difference between those cases in which the indictment contains but one count, and the only express verdict is one of guilty to a part of the charge, the acquittal as to the remainder not being express, but arising only by legal intendment from the verdict of conviction, and the cases in which the partial acquittal is expressly made by the jury. The principal case comes within the latter division, as it was explicitly pronounced in the judgment of the trial court that the defendants were not guilty of murder. In the former class of cases the verdict would of necessity be single, because the acquittal is merely an inference. In the latter class the acquittal being expressly found by the jury and not being a mere implication, there is nothing inherent in the verdict which would prevent its separation into two for the purposes of appeal.

Where the verdict contains several counts the verdict is divisible. Cooley, Constitutional Limitations, 7th ed., 469. Where it consists of but one count charging several distinct crimes the verdict is likewise separable. *State* v. *Bruffey* (1882) 75 Mo. 388. In a civil case an appeal may be taken from a part of a decree or judgment when the portion appealed from can be intelligently treated by itself. *Luck* v. *Luck* (1890) 83 Cal. 574; *Gleiser* v. *McGregor* (1892) 85 Iowa 489; *Hall* v. *M'Cormick* (1883) 31 Minn. 280. Why should not the same rule be applied where the indictment contains but one count and there is a verdict of acquittal as to the larger offense and a verdict of conviction as to a smaller offense?

The weight of authority is opposed to the view taken by the principal case, both where the acquittal is expressed and where it is implied. See cases in the margin of the dissenting opinion of Mr. Justice McKenna and 2 COLUMBIA LAW REVIEW 118. In some States, statutes have consequently been passed to the effect that the granting of a new trial places the parties in the same position as if no trial had been had. The statutes have been held constitutional. *Commonwealth* v. *Arnold* (1884) 83 Ky. 1; *State* v. *McCord* (1871) 8 Kansas 232. The right to appeal and to obtain a reversal is not a constitutional right. The legislature may attach as a condition to its exercise that the appellant surrender his constitutional protection. This reasoning cannot be applied to the defendant in the principal case, as there was no previous decision in the United States Supreme Court in accord with it, and he consequently was not in the position of relinquishing a constitutional right to obtain a privilege.

It may be that the decision of the Supreme Court is sound in policy, as it will frequently deter guilty defendants from seeking a reversal of their conviction and will not usually have that effect upon those who are innocent. It, however, deprives a defendant of his constitutional right.

IMPAIRMENT OF CONTRACT OBLIGATION WITHOUT ACTUAL LOSS.— The doctrine of the United States Supreme Court, enunciated in *Green* v. *Biddle* (1823) 8 Wheat. 1, adopted in *Bronson* v. *Kinzie* (1843) 1

How. 311, that the constitutional provision that "no State shall . . . pass any . . . law impairing the obligation of contracts" is as clearly violated by a law which diminishes the remedy for breach as by a law which changes the terms of the contract, has been repeatedly reaffirmed. The remedy existing at the time of its inception is considered a part of the contract, and any statute giving total or partial immunity for a breach, by diminishing the duty of performance, thereby impairs the obligation of the contract. *McCracken* v. *Hayward* (1844) 2 How. U. S. 608, 612. Will the statute be declared unconstitutional, however, if there is no actual loss to either contracting party? Presumption is in favor of constitutionality. The principle that even a slight infringement of contract rights is prohibited by the constitution, *Planters' Bank* v. *Sharp* (1848) 6 How. U. S. 301, 327, is not inconsistent with a theory based on actual loss. The question arises in an execution sale to satisfy a judgment obtained on a contract. If the judgment creditor has, as a matter of fact, received full satisfaction can the sale be declared to have been made under the statute existing at the time of inception of the contract, merely because, had the judgment been greater, a sale under the subsequent statute would have produced only partial satisfaction? In a recent California case a statute extending the time of redemption from execution sale was held unconstitutional as to judgments on contracts entered into prior to the passage of the statute. There was no inquiry as to whether the judgment creditor had received full satisfaction out of the proceeds of the sale; and the execution purchaser was allowed to raise the question in a suit for recovery of the land, after the expiration of the period of redemption provided by the earlier statute. *Welsh* v. *Cross* (Cal. 1905) 81 Pac. 229.

If the proceeds at an execution sale under the new statute will not satisfy the judgment creditor, he may have an order for sale under the prior statute. *McCracken* v. *Hayward*, supra; *Quackenbush* v. *Danks* (N. Y. 1845) 1 Denio 128. If the sale has taken place without bringing satisfaction, he may have a decree that the sale was under the prior statute, which will benefit him where he is the execution purchaser. *Barnitz* v. *Beverly* (1896) 163 U. S. 118. Where, however, there has been satisfaction, there would seem to be no actual impairment of the contract, and no ground for raising the question of constitutionality. *Turpin* v. *Lemon* (1902) 187 U. S. 51, 60. To allow the execution purchaser, not a party to the contract, to claim, under such circumstances, that his title is held under the prior statute, seems a further error. The second statute being on the statute books at the time of the sale, would seem to govern it. A retrospective statute is not void merely as such. *Railroad* v. *Nesbit* (1850) 10 How. U. S. 395, 410. If the creditor has obtained an order to sell under the prior statute, as in *McCracken* v. *Hayward*, supra, the execution purchaser would not raise the question of constitutionality, that having been done by the creditor, but would merely show the title he actually took by the sheriff's deed. Or even without satisfaction, if the judgment creditor con-

sents to the enforcement of the new statute, the execution purchaser should not be allowed to claim unconstitutionality. A person may waive a constitutional provision made for his benefit. *Baker* v. *Braman* (N. Y. 1843) 6 Hill 47; and it has been held that only a party to the contract may complain of the impairment of its obligation. *People* v. *Brooklyn &c. Co.* (1882) 89 N. Y. 75; *State* ex rel. *Perkins* v. *Montgomery Light Co.* (1893) 102 Ala. 594; see also *Tyler* v. *Judges of Court of Registration* (1900) 179 U. S. 405, and *Wellington* et al. *Petitioners* (Mass. 1834) 16 Pick. 87.

On these two questions the decisions of the United States Supreme Court are in conflict. In *Bronson* v. *Kinzie*, supra, the judgment creditor was granted an order for sale unrestricted by the conditions of the new statute, without any inquiry as to whether otherwise there would be satisfaction of his judgment. In *Edwards* v. *Kearzey* (1877) 96 U. S. 595, the execution purchaser was allowed to invoke the constitutional provision, but as the new statute would have exempted all the debtor's property, the sheriff had levied and sold under the earlier statute. In *Howard* v. *Bugbee* (1860) 24 How. U. S. 461, the purchaser invoked the constitutional provision successfully, although there was no inquiry as to whether the creditor had been satisfied. On the other hand in *Hooker* v. *Burr* (1904) 194 U. S. 415, following *Conn. Mutual Life Ins. Co.* v. *Cushman* (1882) 108 U. S. 51, it was held, first, that there must be an actual impairment of the contract; second, that if a party to the contract has not been injured, or has consented to the enforcement of the second statute, the execution purchaser, not a party to the contract, cannot raise the question of constitutionality, and as to him the later statute was in force. The logic of this latest decision seems unassailable.

PARTNERSHIP LIABILITY FOR UNAUTHORIZED TORT OF PARTNER.— The liability of one partner for the unauthorized torts of the other rests on the principles of agency. *Ashforth* v. *Stanwix* (1860) 3 E. & E. 701; Pollock, Digest of Partnership, 6th ed. 47; Burdick on Partnership, 194 (note 3). Thus he is responsible for such acts of his partner as fall within the "scope of the authority apparently conferred upon him." Lindley on Partnership, 157. Upon the words of the rule the courts are agreed. It is when they come to decide what the rule means in any given case that we find the diversity. A manifestation of a tendency to narrow the "scope of authority" is seen in a recent Maryland case, *Bernheimer Bros.* v. *Becker* (Md. 1905) 62 Atl. 526. The defendants were copartners in conducting a store. The manager of their shoe department, suspecting the plaintiff of stealing, arrested her, and having detained and searched her in the presence and under the direction of one of the members of the firm, found nothing. The innocent partner was held not liable in damages to the plaintiff on the ground that "one partner has no power to bind the firm to the commission of a wrongful act without the previous consent or sub-